

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MICHAEL FRANCIS,)	
CARMEN J. FRANCIS,)	
)	
Appellants,)	
)	
v.)	No. 1:18-cv-00049-JRS-MJD
)	
EMC MORTGAGE LLC.,)	
HOMESALES, INC.,)	
FANNIE MAE,)	
JP MORGAN CHASE BANK,)	
LAWRENCE T. NEWMAN,)	
)	
Appellees.)	

Entry Adopting Report and Recommendation

The Magistrate Judge submitted his Report and Recommendation (ECF No. 24) on Appellees' Motion to Dismiss Appeal (ECF No. 12). The parties had an opportunity under the statute and rules of this Court to file objections. Appellants filed an objection to the Report and Recommendation (ECF No. 25), and Appellees filed a response (ECF No. 26). Having considered the Report and Recommendation, Appellants' objection, and Appellees' response thereto, the Court **OVERRULES** the objection and **ADOPTS** the Report and Recommendation (ECF No. 23). The Motion to Dismiss Appeal (ECF No. 12) is **GRANTED**.

Under Federal Rule of Civil Procedure 72(b), the Court reviews *de novo* any part of the magistrate judge's recommendation to which an objection has been properly made. Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1). The Court may accept, reject, or modify the recommended disposition. Fed. R. Civ. P. 72(b)(3). "Being


persuaded by the magistrate judge's reasoning, even after reviewing the case independently, is perfectly consistent with *de novo* review." *Mendez v. Republic Bank*, 725 F.3d 651, 661 (7th Cir. 2013).

Although the Francises have filed an Objection to the Report and Recommendation, their objection wholly fails to address the basis for the Magistrate Judge's recommendation that this appeal be dismissed—namely, that their untimely notice of appeal deprives this Court of jurisdiction over the appeal. And the Magistrate Judge's conclusion is correct.

"[T]he 14-day time limit to file notice of appeal of the bankruptcy court's judgment or order is jurisdictional." *In re Sobczak-Slomczewski*, 826 F.3d 429, 432 (7th Cir. 2016). Thus, "the failure to file a timely notice of appeal strips the district court of jurisdiction to hear the appeal." *Id.* As the Magistrate Judge found, the Francises appeal the bankruptcy court's December 6, 2017 order denying them relief from judgment, but they neither filed their notice of appeal before the expiration of the 14-day time limit to do so, nor sought leave to extend the time for appeal. As a result, their notice of appeal is untimely and strips this Court of jurisdiction to hear their appeal.

For the foregoing reasons, the Court **OVERRULES** the Francises' Objection to Report and Recommendation (ECF No. 25) and **ADOPTS** the Magistrate Judge's Report and Recommendation (ECF No. 24). This appeal will be dismissed and Appellee's Motion to Stay Deadline for Appellee's Brief (ECF No. 16) is **DENIED AS MOOT**.

Date: 11/13/2018



JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

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